S.B. CIVIL WRIT PETITION No.796/2007
MAHANT SHIV PRAKASH CHANDRA BHATTACHARYA V/S STATE OF RAJ. & Ors.

5.2.2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri A.K. Pareek for the petitioner.

Heard learned counsel for the petitioner.

The petitioner claims to be Mahant of Sheelamata Temple of Amber. He has challenged against the notice issued to him by Estate Officer for his eviction from the premises of Haveli of Raja Chur Singh which is situated close to notified area committee, Amber.

Shri A.K. Pareek, learned counsel for the petitioner submits that although the Haveli may be a monument in the meaning of section 2((i) of the Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961 (for short “the Act”), it being an “ancient or historical monument” has been declared a protected monument under section 3 of the Act but by that factor alone, the residents do

not stand to acquire ownership of the same. He referred to section 4 (2) of the Act which provides that where a protected monument is without an owner, the Director may, by notification in the Official Gazette, assume the guardianship of such monument. Shri Pareek argued that the word 'owner' used with reference to an ancient or historical monument, archaeological site or antiquity includes – (a) a joint owner invested with powers of management of or over such monument, site or antiquity on behalf of himself and other joint owners and the successor-in-title of any such owner, and (b) any manager or trustee exercising powers of such management and the successor-in-office of any such manager or trustee. He argued that the word 'owner' as defined in section 2(viii) does not necessarily mean a title order - manager or trustee and therefore even if the grant made by erstwhile ruler in favour of the petitioner is not taken into consideration, he would nonetheless be liable to be treated as owner. Learned counsel for the petitioner further argued that the Estate Officer does not have the jurisdiction to entertain the matter because the aforesaid monuments does not

fall within the meaning of a public premises as defined by section 2 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964.

In my considered view, writ petition filed merely against a notice cannot be entertained. The petitioner may raise all these arguments before the Estate Officer who shall while deciding the matter also consider and pass an appropriate order with regard to the correctness or otherwise of the same.

With these observations, this writ petition is dismissed as pre-mature.

(Mohammad Rafiq),J.

Chauhan/